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NO. 84-350

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

INDEPENDENT SCHOOL DISTRICT NO. 196, ROSEMOUNT-APPLE VALLEY, MINNESOTA,

Petitioners,

vs.

LYNNE E. CYBYSKE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

RESPONDENT'S BRIEF IN OPPOSITION

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The Respondent, Lynne E. Cybyske, respectfully requests that this Court deny the Petition for Writ of Certiorari, seeking review of the Minnesota Supreme Court's opinion in this case. That opinion is reported at 347 N.W.2d 256 (Minn. 1984).

REASONS WHY THE WRIT SHOULD BE DENIED

Neither the Decision Below Nor The Record Raises The Questions Presented In The Petition.

The first Question presented in the Petition is whether the Minnesota Supreme Court erred in holding, contrary to *Singleton* v. *Wulff*, 428 U.S. 106 (1976), and its progeny, that Respondent Lynne Cybyske had standing to assert a violation of the Association of Freedom of her non-party spouse. The second Question presented in the Petition is whether Respondent's First Amendment freedom of association includes, vicariously, the political beliefs and associations of her non-party spouse. The Petition for Writ should be denied because these Questions were not determined by the Minnesota Supreme Court, the court below and are, thus, not properly before this Court. *See* Sup. Ct. R. 17.1(b); *Tacon v. Arizona*, 410 U.S. 351, 352 (1973); *Street v. New York*, 394 U.S. 576, 582 (1969); *Bailey v. Anderson*, 326 U.S. 203, 206-207 (1948).

In Part I of its opinion the Minnesota Supreme Court held that Lynne Cybyske did not state a claim for marital status discrimination under the Minnesota Human Rights Act, Minn. Stat. §§363.01-.14 (1982). In Part II of its opinion the Minnesota Supreme Court held that Respondent Lynne Cybyske had stated a cause of action under 42 U.S.C. §1983 against the Petitioner school district and its administrators for infringement of *her* right to freedom of association under the First and Fourteenth Amendments to the United States Constitution.

Contrary to Petitioners' argument, it is clear that Respondent is making a claim only with regard to violation of *her* freedom of association and speech. Further, the Minnesota Supreme Court only considered the case with regard to Petitioner's rights as it stated that "[w]e hold the plaintiff-appellent has, in the current posture of this case, established a constitutional claim sufficient to defeat defendants' motion for summary judgment." *Id.* at 262. The Court then stated that Lynne Cybyske "may prevail if she can establish that the decision of the public employer not to hire her was made because of *her* exercise of constitutionally protected rights and freedoms. . . . The alleged deprivations in this case were to *Lynne Cybyske's* freedom of association and freedom of choice in marriage under the first and fourteenth Amendments." *Id.* (Emphasis added). The Minnesota Supreme Court did not determine whether Lynne Cybyske had standing to assert a violation of the associational freedom of her spouse nor whether her freedom of association included, vicariously, the political beliefs and associations of her non-party spouse. In fact, the Minnesota Supreme Court recognized a standing problem and stated in its refusal to allow Lynne Cybyske's non-party spouse to be joined as a party: "[w]e do not see how Lynne has standing here to assert Daniel's claim." *Id.* at 264. Thus, Petitioners are asking this Court for a decision on an issue about which the Minnesota Supreme Court stated, albeit in dicta, that it would have found in favor of Petitioner-Defendants.

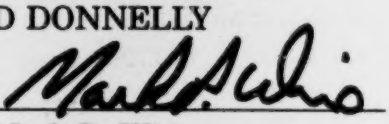
Petitioners' Questions presented in the Petition are, therefore, merely hypothetical questions and are not subject to review by this Court. In the context of the present record, which conclusively shows that Respondent is asserting only violations of *her* constitutional freedoms under the First and Fourteenth Amendments, the questions presented in the Petition could be resolved only by rendering an impermissible advisory opinion.

CONCLUSION

For these reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

OPPENHEIMER WOLFF
FOSTER SHEPARD
AND DONNELLY

By 

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